

Senate Study Bill 1118

SENATE FILE _____
BY (PROPOSED COMMITTEE ON
LABOR AND BUSINESS
RELATIONS BILL BY
CHAIRPERSON COURTNEY)

Passed Senate, Date _____ Passed House, Date _____
Vote: Ayes _____ Nays _____ Vote: Ayes _____ Nays _____
Approved _____

A BILL FOR

1 An Act requiring the assessment of penalties for failure to
2 timely pay certain workers' compensation benefits.
3 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:
4 TLSB 1938XC 83
5 av/rj/8

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1 1 Section 1. Section 86.13, Code 2009, is amended to read as
1 2 follows:
1 3 86.13 COMPENSATION PAYMENTS.
1 4 1. If an employer or insurance carrier pays weekly
1 5 compensation benefits to an employee, the employer or
1 6 insurance carrier shall file with the workers' compensation
1 7 commissioner in the form and manner required by the workers'
1 8 compensation commissioner a notice of the commencement of the
1 9 payments. The payments establish conclusively that the
1 10 employer and insurance carrier have notice of the injury for
1 11 which benefits are claimed but the payments do not constitute
1 12 an admission of liability under this chapter or chapter 85,
1 13 85A, or 85B.
1 14 2. If an employer or insurance carrier fails to file the
1 15 notice required by this section, the failure stops the running
1 16 of the time periods in section 85.26 as of the date of the
1 17 first payment. If commenced, the payments shall be terminated
1 18 only when the employee has returned to work, or upon thirty
1 19 days' notice stating the reason for the termination and
1 20 advising the employee of the right to file a claim with the
1 21 workers' compensation commissioner.
1 22 3. This section does not prevent the parties from reaching
1 23 an agreement for settlement regarding compensation. However,
1 24 the agreement is valid only if signed by all parties and
1 25 approved by the workers' compensation commissioner.
1 26 ~~If a delay in commencement or termination of benefits~~
1 27 ~~occurs without reasonable or probable cause or excuse, the~~
1 28 ~~workers' compensation commissioner shall award benefits in~~
1 29 ~~addition to those benefits payable under this chapter, or~~
1 30 ~~chapter 85, 85A, or 85B, up to fifty percent of the amount of~~
1 31 ~~benefits that were unreasonably delayed or denied.~~
1 32 4. a. An employer has an affirmative duty to pay its
1 33 employee the entirety of the benefits, plus any interest
1 34 accrued thereon, to which the employee is entitled under
1 35 chapters 85, 85A, and 85B, and this chapter by the date that
2 1 the benefits or interest are due. If an employee proves that
2 2 the employer's employer, the employer's workers' compensation
2 3 carrier, or both, did not pay any part of such benefits and
2 4 interest to the employee by the due date, the workers'
2 5 compensation commissioner shall order the employer, carrier,
2 6 or both, to pay a penalty to the employee of up to fifty
2 7 percent of the amount due. The penalty ordered also
2 8 constitutes a workers' compensation benefit and payment is due
2 9 to the employee within ten days after the order is filed.
2 10 b. However, the commissioner shall not order a penalty
2 11 paid as provided in paragraph "a" if after weighing all the
2 12 evidence received and determining its credibility, the
2 13 commissioner finds that based on all the circumstances proved,
2 14 the employer, its workers' compensation carrier, or both, has
2 15 proven, as an affirmative defense, that the failure of the
2 16 employer, carrier, or both, to perform the affirmative duty to
2 17 pay such benefits and interest when purportedly due, occurred

2 18 after both of the following:

2 19 (1) The employer, its carrier, or both, conducted a
2 20 reasonable investigation and a reasonable evaluation of the
2 21 employee's entitlement to workers' compensation benefits and
2 22 interest.

2 23 (2) The employer, its carrier, or both, had a basis for
2 24 the failure to pay such benefits and interest which was both
2 25 reasonable and was the actual reason for the failure to pay
2 26 benefits and interest, and was provided in writing to the
2 27 employee on or before the purported due date for payment of
2 28 the benefits and interest. A defense presented by an
2 29 employer, its carrier, or both, that the basis of the failure
2 30 to pay such benefits and interest when due is that the
2 31 employee's entitlement to such benefits and interest is fairly
2 32 debatable as a matter of law, as that defense is recognized in
2 33 the common law as a reasonable basis for a failure to pay with
2 34 respect to a bad-faith tort, does not constitute a reasonable
2 35 basis for the failure to perform the affirmative duty to pay
3 1 benefits and interest when due pursuant to this subsection.

3 2 EXPLANATION

3 3 This bill amends Code section 86.13 to provide that all
3 4 employers, their workers' compensation carriers, or both, have
3 5 an affirmative duty to pay employees all workers' compensation
3 6 benefits and interest due on those benefits to which the
3 7 employee is entitled under Code chapters 85, 85A, 85B, and 86,
3 8 by the date the benefits or interest are due. If an employee
3 9 proves that such benefits and interest have not been paid when
3 10 due, the worker's compensation commissioner is required to
3 11 order the employer, its carrier, or both, to pay a penalty to
3 12 the employee of up to 50 percent of the amount due. The
3 13 penalty ordered also constitutes a workers' compensation
3 14 benefit and is due within 10 days after the order is filed.

3 15 The bill also provides that the commissioner shall not
3 16 order payment of such a penalty if after weighing all the
3 17 evidence received and determining its credibility, the
3 18 commissioner finds that the employer, its carrier, or both,
3 19 has proven that the failure to perform the affirmative duty to
3 20 pay the benefits and interest when purportedly due, occurred
3 21 after conducting a reasonable investigation and reasonable
3 22 evaluation of the employee's entitlement to such benefits and
3 23 interest and with a basis that was both reasonable and was the
3 24 actual reason for the failure to pay, and was provided in
3 25 writing to the employee on or before the purported due date
3 26 for the payments. The bill also provides that a defense that
3 27 the basis of the failure to pay is that the employee's
3 28 entitlement to such benefits or interest is fairly debatable
3 29 as that defense is recognized in the common law as a
3 30 reasonable basis for a failure to pay with respect to a
3 31 bad-faith tort, does not constitute a reasonable basis for the
3 32 failure to perform the affirmative duty to pay benefits and
3 33 interest when due pursuant to this subsection.

3 34 LSB 1938XC 83

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